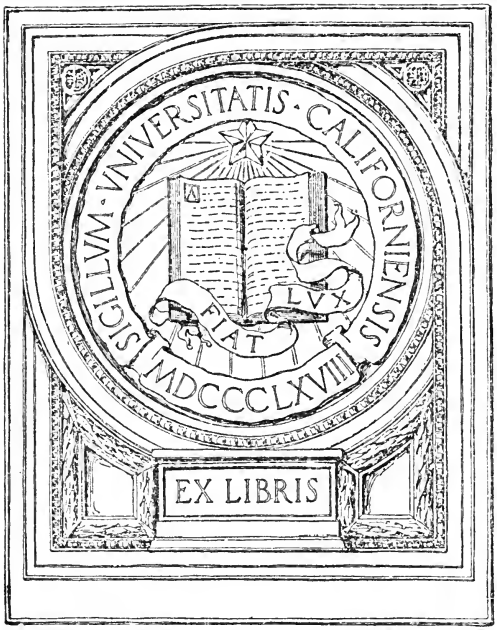
Salvador. Ministerio de relaciones exteriores.
El Salvador and the U.S.



# Salvador and the United States.

The Government of El Salvador and the Treaty between the United States and Nicaragua, approved by the American Senate on 18th February, 1916.

TRANSLATION BY

ICOLÁS LEIVA, CONSUL OF EL SALVADOR.

LIVERPOOL, JUNE, 1916.

MINISTRY OF FOREIGN AFFAIRS,

SAN SALVADOR,

*3rd March*, 1916.

SIR,

I beg to acknowledge receipt of your courteous communication in which you kindly manifest that, directed by the State Department, beg to inform my Government that on 18th February the Senate of the United States by a majority of 55 votes against 18, gave its approbation to the Treaty with Nicaragua with some amendments kindly indicated by you, of which the third one runs so : " It is understood that : having Costa-Rica, El Salvador and Honduras interposed their protest against the ratification of the said Convention, by fear or in the belief that the same might lessen in one way or another the existing rights of the Central-American States, the Senate declares : that in advising and consenting in the ratification of the said Treaty thus amended, such advice and consent are given in the understanding that there will be stated, as a part of the instrument of the said ratification, that nothing whatever in the aforesaid Treaty has any design of affecting any possible right of the above mentioned States."

While taking due notice of your kind information, my Government believe that any negligence in submitting to your judgment some relevant considerations upon such an important matter,

should imply the neglect of a momentous duty, not only to our Motherland, whose rights would be much affected, but to your own country, because of the lack of the customary loyalty that has always presided over our diplomatic relations with the American Government.

First of all, my Government, trusting the high spirit of justice of the American Government, never expected the Convention with Nicaragua to be carried to the last before the resolution of our protest, still pending in Washington.

This hope was chiefly based on the assurance that your Government should bestow full consideration to the fact adduced in our last protest dealing with the circumstance that the Treaty in question violates the neutralization of Honduras, guaranteed by the Central-American Convention signed in Washington on 20th December, 1907.

My Government think, Hon. Sir, that the Treaty with Nicaragua lacks of a legal base to constitute lawful rights, on account of being manifestly contrary to the Treaties in force and to the principles of International Law, and, therefore, to the justice and consideration that bind nations in their friendly dealings.

The General Treaty of Peace and Friendship, principal base of these Conventions, proposes itself to maintain peace in Central America, as the only means to fulfill the high purpose aimed at by the Central-American Conference held in Washington in 1907, as stated in Art. I of this

diplomatic instrument, in virtue of which, the five Central-American Republics solemnly declare that they consider their unavoidable duty in their mutual relations, the maintenance of peace by means actually established. The first of these provisions is to secure the benefits emanated from the practice of republican institutions, by contributing to affirm their stability, and for this purpose, it has been stated in Art. II that every disposition or measure tending to alter the constitutional order in any of the five Republics, is considered as a menace to the peace of Central-America. Now, the constitutional order can be altered in many ways, but without any doubt, the most threatening, grave and dangerous manner of altering it, is the fact—unknown in America—that a foreign, strong and powerful nation should take hold of a part of the Central-American territory and establish there a military predominance that indisputably is bound to assume in a short time the political control all over the dismembered country, as the only practical guaranty of the existence and consolidation of that military power incrusted in the very heart of Central America. Thus lessened the authority, sovereignty and jurisdiction of the country, it is obvious that the constitutional order is bound to suffer a profound alteration, whereas the empire of the constitution or constitutional order has for principal end the free exercise of its sovereignty and the unharmed integrity of its land. When a

strong nation possesses itself of a part, however small, of the territory of a weak country, the demarcation lines of both cannot be morally defined, although materially be so, whereas the stronger power cannot help enlarging the sphere of its dominion, its influence and its interests at the expense of the weaker power, if not guided by ambitious designs, as a necessary consequence of the logic and natural tendency of securing the stability of the military or political establishment in question. The instinct of self defence necessarily compels the occupant to widen more and more his authority, now seizing the strategical points that might threaten the security of his military base, now checking the political and even the economical interests of the weak country, pretending that they might cause external or internal troubles and become a danger to the existence of the captured zone, however much this be mathematically defined. The invading tendency in such circumstances, is a fact incontestably proved by the history of the colonization of the European countries in America, Asia and Africa from the 15th century up to now. To put a stop to these intrusions, always dangerous, the political constitutions of the American countries have forbidden—as the Nicaraguan Constitution emphatically does in Art. II—the alienation to a foreign power of any part whatever of the national territory, because the intrusion of an alien sovereignty is bound to alter the order that the law

maintains in the efficient and far-reaching form of the exclusion of foreign nations, by means of the constitutional principle of the inalienability of the national soil. On the same ground, undoubtedly, the illustrious President Monroe declared in 1823 that : " The United States would consider any attempt from the European Powers to extend their political system over any portion whatever of the American Hemisphere, as *dangerous to their own peace and security ;* that the American continents, by the free and independent condition they have acquired and maintain, are no longer to be considered themselves as subject to colonization in future, on the part of any European Power ; and that the United States will never consent in any intervention having as object to oppress or control in any shape or form the destiny of these nations, facts that will be considered as hostile and unfriendly." The Monroe doctrine, then, has for foundation the right of the self-defence and the security of the country that maintains it ; and in that sense, we may assert that Art. II of the General Treaty above mentioned, while proclaiming the inalterability of the constitutional order of the Central-American States and providing, therefore, a means to stop the alienation or colonization of their territories, is as legitimate as the renowned doctrine and has for foundation its same foundation : the right of the security of nations. Every disposition or measure, then, taken by any Central-American State that

should alter its constitutional order through the alienation of its territory and the intrusion of the sovereignty of a foreign power, flagrantly violates the fundamental principle of the General Treaty of Peace and Friendship, although the intervention should appear under the disguise of a centennial lease. Everybody can see how clear and evident is the alteration of the constitutional order of Nicaragua, through the establishment of the naval base created by the Treaty, only by reading Art. II of the said instrument, that runs so : " Besides, the Government of Nicaragua grant the United States for an equal period of 99 years, the right to establish, maintain and keep a naval base on a part of the Nicaraguan territory bordering the Gulf of Fonseca, chosen by the United States, whose Government will have the right of renewing for a further 99 years the said lease and concessions, after expiration of the respective terms, being expressly stipulated that the territory on lease, according to the present Convention, and the naval base of the above mentioned concession, *will be exclusively subject to the laws and authorities of the United States until the end of the said lease and concessions or of any renovation or renovations whatever that might possibly come.*" It is as clear as it could be the alteration of the constitutional order of Nicaragua, whereas its sovereignty upon a part of its own territory has been taken off and appropriated by the United States. Besides, by the second amendment of the Senate, the American

Government retain a complete and absolute control on the investment of the 3,000,000 dollars given as a price to Nicaragua, the payment of which sum will be made by the United States by means of drafts drawn by the Minister of Finance of Nicaragua duly approved by the American Secretary of State, or by the person appointed on his behalf. All this lessens the sovereignty of Nicaragua, imposes a foreign control on this country, and alters, therefore, the constitutional order that rests on the principle of absolute independence and on the inalienable integrity of its soil.

Moreover, not only in this vexatious manner the contractors of the naval base settlement have violated the Washington Conventions, because Art. III of the said General Treaty of Peace and Friendship has been violated, too, whereas it establishes the civilized and pacifier principle of the neutralization of the territory and waters of Honduras, one of the most noble and useful conquests carried on by those Conventions. The form and capacity into which the Hondurian neutrality has been established, imply, necessarily, the application of all the principles derived from the International Law regarding the permanent neutralization of the States. Neutrality, which is one of the juridical forms adopted to maintain the right of the security of nations, binds the countries that indorse it and impose on them the unavoidable duty of respecting it, that is to say,

that they should be the first to refrain from any act that might involve the violation of a state of neutrality, and the last to threaten the security of the neutralized country, not only within the zone of neutralization, but out of it and in the co-guarantor's own territory; and it is out of question that the establishment of a naval base in the maritime zone of the neutralized territory, is one of these violative acts. So far, this has always been the international practice, because it is a recognized and ratified principle that the neutrality of navigable waters imposes on the riparian States the obligation of not fortifying their coasts, and thus has been declared in the Congress of Paris, 1856, by the European signatories of the Treaty of 30th of March, Art. XIII of which runs so : " Being the Black Sea neutralized, as stated in Art. II, arsenals are no longer considered necessary along its coasts; therefore, His Majesty the Emperor of Russia and His Imperial Majesty the Sultan bind themselves and make a pledge of not establishing or keeping on this littoral any military or maritime arsenal." Also the neutralization of the Baltic Sea was accorded in the same Congress as follows : " His Majesty the Emperor of Russia, to oblige their Majesties the Queen of the United Kingdom of Great Britain and Ireland and the Emperor of the French, hereby declares that the Aaland Islands will not be fortified and that no naval or military establishment will be kept therein." And lately

Germany and France, while exchanging the territories mutually ceded in Africa, agreed in neutralizing the waters of the great rivers across them, and actually, in the Convention known as the Congolean Accord of 4th November, 1911, in Art. IX, the following was decided : " France and Germany, desiring to strengthen their good relations in their Colonies of Central Africa, agree in not building any fortification along the common navigable waters. This prohibition does not apply to the military works of simple defence against the incursions of the natives." On 8th April, 1904, France and England put an end to their differences about the serious and entangled Morocco Question, by means of the diplomatic agreement called the " Entente Cordiale," Art. VII of this Convention stating : " In pursuance of establishing the free passage of the Gibraltar Strait, both Governments agree in not allowing any fortifications or strategical works whatever to be built up on the portion of the Morocco coast comprised between Melilla and the heights that master the right bank of the Sebu River, exclusively. This disposition, however, does not apply to the points at present occupied by Spain in the Morocco littoral of the Mediterranean." Great Britain made this concession in spite of the vital importance of its strategical and economical interests, as a compensation for the agreement regarding the neutrality of the Suez Canal. It has been, then, incontestably proved that, according to the

principles and practice of International Law, the fortification of points near neutralized territories or waters, is clearly prohibited, as threatening the very existence of a state of neutrality. Therefore, the Government of Nicaragua had no right in authorizing the establishment of a naval base that practically threatens the security of a neutralized territory, and the United States is wrong in violating the neutrality of Honduras, because its character as mediator assumed in the Central-American Conference prevents it from breaking a covenant held at their own advice and signed under their own protection.

Consequently, the naval base in the Gulf of Fonseca invalidates the fundamental principles of the Washington Conventions, fact that makes ineffectual the stipulations of the Chamorro-Bryan Treaty and annuls the rights that the United States might pretend to derive from it.

The principles of International Law regarding the right of the security of nations, would be so equally impaired, because, according to these principles, no State has the right to do any act that might threaten the security of others and this obligation is still more strict and pressing if the menacing act involves a place like the waters of the Gulf of Fonseca, that juridically constitutes a communal and undivided property, circumstance that lessens the rights of El Salvador and Honduras, which have never agreed in the establishment of a naval base in their common waters. It does not

admit discussion this danger to the riparian States derived from this naval base, and the State or States that might pretend to imperil so the security of others, by this act alone, violate the principles of natural law that bind both nations and individuals. I could easily produce many cases proving that the danger that threatens the security of a country, has given this the unquestionable right to interpose prohibiting action; but for the sake of shortness, I shall illustrate a matter of the highest judicial and moral order, with the most recent and typical instance, namely, the opposition from the part of France and England to the establishment by Germany of a naval base in Agadir in 1911.

The flagrant incongruity existing between the clauses of the Chamorro-Bryan Treaty and the principles of International Law that justify the juridical situation of the Gulf of Fonseca, is another unquestionable reason to consider as nugatory and without any legal value the pretended rights of the said Convention.

If the American Government is willing to give (as I do not doubt) a just and effective interpretation to the amendment of the Senate—which does not purpose to lessen the existing rights of El Salvador—they have no other way to satisfy our legitimate rights to security, sovereignty and dominion, but to renounce the design of founding a base or military establishment whatever in the Gulf of Fonseca.

Founded on the above mentioned considerations, that I beg to submit to the high knowledge of the North-American Government, this Chancellery solemnly declares: that it does not recognize the validity of the Treaty with Nicaragua that establishes a naval base in the Gulf of Fonseca, and that, therefore, the Government of El Salvador, in every time and place, will insist in annulling the said Treaty by every means provided by the existing Conventions, International Law and Justice.

Protesting to you, once more, the assurance of my high consideration,

I remain,

Honourable Sir,

Your obedient servant,

(S.) F. MARTÍNEZ S.

*To the Honourable Henry F. Tennant,*
*Chargé d'Affairs ad interim of the*
*United States, San Salvador.*